

# EXHIBIT G

**In the Matter Of:**

NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY

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**VIDEOTAPED DEPOSITION OF ROBERT C. KAISER**

*July 08, 2015*

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## I N D E X

WITNESS	PAGE
ROBERT C. KAISER	
By Mr. Gastel	11
By Mr. Schramek	61
By Mr. Krause	266
By Mr. Gastel	279
By Mr. Schramek	288

## E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 457-1	Saint Thomas Entities' First Amended Notice of Filing of Discovery Subpoenas	12
Exhibit 457-2	Amended Notice of Deposition of Liberty Industries, Inc. pursuant to Federal Rules of Civil Procedure 30(b)(6)	12
Exhibit 457-3	Cleanroom Certification Report, July 12, 2006	24
Exhibit 457-4	Cleanroom Certification Report, October 7, 2005	46
Exhibit 457-5	Cleanroom Certification Report, March 6, 2008	47

1	Exhibit	Three pages headed "Photographs	51
2	457-6	from July 9, 2014 Site	
3		Inspection"	
4	Exhibit	One-page Job Completion Signoff	56
5	457-7	Sheet and one-page attached	
6		Ameridose Cleanroom Final	
7		Punchlist, Bates stamped 003691	
8		through 003692	
9	Exhibit	One-page fax memo dated	57
10	457-8	August 18, 2006	
11	Exhibit	Master Complaint excerpt	62
12	457-9		
13	Exhibit	Declaration of Dr. Philip J.	73
14	457-10	Austin Ph.D.	
15	Exhibit	Catalog headed Liberty	113
16	457-11	Industries, Designers,	
17		Manufacturers and Distributors,	
18		Bates stamped 001310 through	
19		001420	
20	Exhibit	Three-page e-mail chain, Bates	171
21	457-12	stamped 008924 through 008926	
22	Exhibit	International Standard ISO	202
23	457-13	14644-4	
24	Exhibit	International Standard ISO	286
25	457-14	014644-1, -2 and-3	



1 MR. GASTEL: Objection to form.

2 A. All right.

3 BY MR. SCHRAMEK:

4 Q. Do you have any reason to dispute that  
5 they shut down in 2012?

6 A. No.

7 Q. All right. Assuming they in fact shut  
8 down in 2012, you would agree with me, sir, that  
9 your inspection would have occurred more than a  
10 year and a half after NECC ceased operations?

11 A. Yes.

12 Q. So when I look at Exhibit 457-6, if you  
13 could pull it out for me.

14 (Witness complying.)

15 Q. I would like to go through each figure,  
16 and I want to ask you some questions about each  
17 one. Okay?

18 A. Okay.

19 Q. First of all, 457-6 are all pictures that  
20 were taken in the 2014 inspection in the summer?  
21 Correct?

22 A. Correct.

23 Q. What was the temperature inside the  
24 cleanroom when you were in there?

25 A. Oppressively hot and humid.



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1 Q. Very hot? Right?

2 A. I wouldn't say very hot, but hot.

3 Q. Were you sweating?

4 A. No, I don't sweat that easily.

5 Q. All right. Was your counsel sweating?

6 A. No.

7 Q. The HVAC system was off? Correct?

8 A. Correct.

9 Q. There was no air conditioning in the  
10 middle of July when you did your inspection?  
11 Correct?

12 A. Correct.

13 Q. The cleanrooms had been shut down without  
14 any air conditioning for over a year and a half  
15 when you did your inspection? Right?

16 MR. GASTEL: Objection to the form.

17 A. If you say so, yes.

18 BY MR. SCHRAMEK:

19 Q. Do you have any reason to believe that  
20 they had been operation in the year and a half  
21 previous to your inspection?

22 A. I have no reason to believe they were or  
23 they weren't. The day we were there, they were not  
24 running.

25 Q. And to your knowledge, no compounding had

1 operations? Correct?

2 A. I don't know that.

3 Q. Do you have any knowledge about whether  
4 that tacky mat, the dirty filthy tacky mat in 2014  
5 after NECC had been shut down for a year and a  
6 half, looked that way when NECC was actually  
7 operating two years earlier?

8 A. No, I don't.

9 Q. All right. And the same for figure 3.  
10 You can tell me that when you walked in there with  
11 no HVAC on in 2014, a year and a half after NECC  
12 had been shut down, you can tell me there were two  
13 dirty tacky mats as of that time? Right?

14 A. Yes, I can.

15 Q. And you have no idea what those tacky mats  
16 looked like when NECC was in operation, do you?

17 A. No. But I can allege that they looked  
18 like that.

19 MR. SCHRAMEK: Strike that.

20 BY MR. SCHRAMEK:

21 Q. Do you have any knowledge of what they  
22 looked like when NECC was in operation?

23 A. No.

24 Q. I want to talk about ceiling 4 -- figure  
25 4, sorry, the ceiling penetrations. Now you are

1 taking -- what is this picture supposed to show?

2 What ceiling penetration are you pointing to?

3 A. You can see the black things coming down  
4 from the ceiling.

5 Q. Well, aren't those extension cords?

6 A. I have no idea what -- some of them are  
7 extension cords, but they were improperly done.  
8 There were no escutcheon plates on the tops.

9 Q. Well, do you see how the extension cords  
10 or the cords that are hanging, how they are hanging  
11 and then they drop back behind the equipment?

12 A. From the angle of the picture, yes.

13 Q. Okay. Because what had happened here is  
14 that someone had plugged in this cord into an  
15 outlet, and then strung it over the ceiling, so  
16 that they could pull the outlet to the middle of  
17 the room? Right?

18 MR. GASTEL: Objection to the form.

19 A. It would appear that way. Yes.

20 BY MR. SCHRAMEK:

21 Q. All right. There are no holes that have  
22 been drilled in the actual ceiling tiles? Correct?

23 A. In this picture, no.

24 Q. All right. And you are seeing that  
25 someone has taken an extension cord and strung it



1 over to the middle of the room as of 2014?

2 Correct?

3 A. Correct.

4 Q. And once again sitting here today you have  
5 no idea what that room looked like when it was in  
6 operation and NECC was actually conducting  
7 operations two years before? Right?

8 A. Correct.

9 Q. I also want to talk about the rust on the  
10 processing equipment, figure 5. All right?

11 A. Um-hmm.

12 Q. Are you with me?

13 A. I am.

14 Q. I think we have established it was hot in  
15 that room, right, in 2014?

16 A. We have done that. Yes.

17 Q. And there was no HVAC on? Right?

18 A. That day there was not.

19 Q. Very humid in that room? Right?

20 A. Very.

21 Q. And you have no reason to believe that the  
22 HVAC had ever been on in the year and a half since  
23 NECC had closed? Correct?

24 A. No comment. I don't know.

25 Q. You don't know. And if it is a hot room



1 and if it is a humid room and no one is turning on  
2 the HVAC for a year and a half, you are going to  
3 get rust, aren't you?

4 MR. GASTEL: Objection to the form.

5 A. You would think so. Yes.

6 BY MR. SCHRAMEK:

7 Q. All right. So figure 5, rust on  
8 processing proceeding equipment, you can say it was  
9 there in the summer of 2014, but you have no idea  
10 what that -- whether there was rust on equipment in  
11 2012 when NECC was operating? Correct?

12 A. Correct.

13 Q. The same thing for figure 6, the missing  
14 ceiling tile.

15 Do you remember in Dr. Austin's  
16 affidavit, if we could go back to that for just a  
17 second.

18 (Witness complying.)

19 Q. He conducted a three-day inspection in  
20 December of 2012? Right?

21 MR. GASTEL: Objection. Objection.

22 A. Yes, he did.

23 BY MR. SCHRAMEK:

24 Q. And according to his sworn testimony in  
25 this proceeding he says it was under the

1 supervision of federal agents and lawyers? Right?

2 MR. GASTEL: Objection to the form.

3 A. That's what it says. Yes.

4 BY MR. SCHRAMEK:

5 Q. So when I look at figure 6 and there is a  
6 missing ceiling tile, do you know whether or not a  
7 federal agent took that with them during their  
8 three-day inspection of the facility?

9 MR. GASTEL: Objection to the form.

10 A. I don't know.

11 BY MR. SCHRAMEK:

12 Q. In fact you have no idea whether the  
13 ceiling tile was missing when NECC was in  
14 operation? Correct?

15 A. Correct.

16 MR. HERMES: Counsel, I note for the  
17 record just you used the word "sworn" referring  
18 to Exhibit 457-10. I don't see anything other  
19 than the words "respectfully submitted" above a  
20 signature which may or may not be that of  
21 Dr. Philip J. Austin, Ph.D.

22 MR. SCHRAMEK: Well, the document is  
23 titled "Declaration." So is it fair if we call  
24 it Mr. -- Dr. Austin's declaration?

25 BY MR. SCHRAMEK:

1 Q. Is that all right? Is that fair if we  
2 call it Dr. Austin's declaration?

3 A. That's what it says it is, yes.

4 Q. Okay. So we don't know whether there is  
5 sworn to or not, right, and the only way we would  
6 know that is to talk to Dr. Austin? Fair?

7 MR. GASTEL: Objection to the form.

8 A. I would assume so, yes.

9 BY MR. SCHRAMEK:

10 Q. If we look at figure 7.

11 (Witness complying.)

12 Q. The full garbage bag at the proceeding  
13 equipment, do you have any -- any evidence or any  
14 knowledge as to when that garbage bag was placed at  
15 the processing equipment?

16 A. No.

17 Q. Do you know whether or not that bag of  
18 garbage was put by one of the federal agents or  
19 lawyers that had inspected in 2012?

20 A. Highly unlikely.

21 Q. My question is do you know.

22 A. No.

23 Q. All right. Do you know whether or not  
24 that garbage bag was put by a NECC employee as they  
25 cleaned up to shut down the cleanroom?

1 A. No.

2 Q. Figure 8, example of blocked return  
3 grills, now what you are showing here is a blocked  
4 return grid by a shopping cart? Right?

5 A. Correct.

6 Q. And the shopping cart, it has wheels on  
7 it? Correct?

8 A. Yes.

9 Q. And it can easily be moved somewhere else?  
10 Right?

11 A. Correct.

12 Q. And what you are saying is in July of  
13 2014, two years after NECC had conducted operations  
14 in this cleanroom, somehow a shopping cart got in  
15 front of a return grill? Right?

16 A. Right.

17 Q. And you are not the only person who  
18 inspected NECC in 2014 of July? Correct?

19 A. Correct.

20 Q. There were people that were coming in  
21 before you and there were people who came in after  
22 you? Right?

23 A. Correct.

24 Q. And so you have no clue whether that  
25 shopping cart was actually in front of that return

1 grill at any point in time during which NECC was  
2 conducting operations? Correct?

3 MR. HERMES: Objection.

4 A. Correct.

5 BY MR. SCHRAMEK:

6 Q. Figure 9 is improper piping and rust;  
7 right? Do you see that?

8 A. Yes.

9 Q. What room is that in, by the way, the  
10 improper piping and rust?

11 A. I do not recall which room that is in.

12 Q. All right. And this is -- but this is the  
13 room where you said there was a sink added? Is  
14 that what this is?

15 A. That is that room, yes.

16 Q. And as we talked about earlier, a year and  
17 a half with no air conditioning, with no humidity  
18 control, that can lead to rust? Right?

19 MR. GASTEL: Objection to the form.

20 A. It could.

21 BY MR. SCHRAMEK:

22 Q. And you have no idea whether or not in  
23 2012, two years before, when the compounding that  
24 resulted in the contaminated drug occurred, you  
25 have no idea if at that point in time any of that

1 piping had rust, do you?

2 A. No, I don't.

3 Q. Figure 10 is the inoperable Stanley door  
4 damaged gasketing. Again you have no idea what  
5 that gasketing looked like two years before when  
6 NECC conducted operations? Right?

7 A. Correct.

8 Q. And you know that after NECC was shut down  
9 there were federal agents, there were lawyers going  
10 in and out, at least in 2012? Right?

11 MR. GASTEL: Objection to the form.

12 A. Right.

13 BY MR. SCHRAMEK:

14 Q. And you don't know if any one of those  
15 broke it or pulled the gasket out or looked at the  
16 gasket? Right?

17 A. Correct.

18 Q. The filthy autoclave, figure 11, again you  
19 have no idea what that autoclave looked like in  
20 2012, two years before you conducted your  
21 inspection? Right?

22 A. Correct.

23 Q. And the same with the ceiling tile  
24 figure 12. I believe what figure 12 is showing is  
25 that there is silver tape around the edge of the

1 ceiling tile. Right?

2 A. Correct.

3 Q. Again you have no idea how that silver  
4 tape got there? Right?

5 A. Right.

6 Q. You have no idea whether that silver tape  
7 was there when NECC was actually conducting  
8 operations in this cleanroom? Right?

9 A. Right.

10 Q. Is it fair to say figure -- I am sorry.  
11 We are not done. Let's turn the page.

12 (Witness complying.)

13 Q. Figure 13 is the improper -- what you call  
14 improper ceiling penetrations, and this one shows  
15 some -- an electrical plate from where that cord is  
16 coming down. Right?

17 A. Right.

18 Q. And that electrical plate appears to be on  
19 the wall -- is it on the wall or the ceiling? Do  
20 you know?

21 A. I don't know.

22 Q. Okay. You have no idea how that  
23 electrical plate got there or when it was  
24 installed? Right?

25 A. No.



1 Q. All right. The missing door sweeps,  
2 figure 14, essentially figure 14 is saying that  
3 usually at the bottom of a door there is basically  
4 it looks like a little broom, the bristles of a  
5 broom, or it could be a solid piece of rubber that  
6 kind of hugs the floor? Right?

7 A. Right.

8 Q. And the purpose of that is when you open  
9 it, it is supposed to hug the floor, and it can --  
10 it doesn't allow anything underneath the door to  
11 blow in? Right?

12 A. Right.

13 Q. In fact a lot of times you will see that  
14 at the bottom of a shower? Right? A glass shower  
15 will have one?

16 A. Right.

17 Q. What you are saying is in 2014, two years  
18 after NECC had conducted its operations, this door  
19 depicted in figure 14 did not have a door sweep?  
20 Right?

21 A. That is correct.

22 Q. You have no idea whether there were door  
23 sweeps there when NECC was in operation? Right?

24 A. Correct.

25 Q. And you have no idea whether or not the



1 federal agents or Department of Justice took those  
2 door sweeps to conduct tests on them? Right?

3 A. Correct.

4 Q. Figure 15, the same thing. Another  
5 overflowing garbage bag. It was overflowing in  
6 July '14, two years after NECC shut down? Right?

7 A. Correct.

8 Q. You have no idea when it got there or who  
9 put it there? Right?

10 A. Correct.

11 Q. No idea whether a garbage bag was  
12 overflowing when NECC was in operation? Right?

13 A. Correct.

14 Q. In fact have you reviewed security footage  
15 of NECC that is available from September and  
16 October of 2012?

17 A. I have not.

18 Q. So you haven't done any analysis to see if  
19 in fact the security camera for this very room,  
20 which is the prep room, shows an overflowing  
21 garbage bag, have you?

22 MR. GASTEL: Objection to the form.

23 A. No.

24 BY MR. SCHRAMEK:

25 Q. Would it surprise you if the jury saw the

1           A.       But as a comment to my understanding of  
2 what happened is when NECC was shut down it was  
3 almost immediate, and everyone vacated the  
4 premises, which leaves credence to my allegation  
5 that these pictures represent what the building was  
6 like when they left --

7           Q.       So --

8           A.       -- in 2012.

9           Q.       You will agree with me that Dr. Austin  
10 doing an inspection in December of 2012 would have  
11 better information as to what it looked like than  
12 you do for your July 14 inspection?

13          A.       That is correct.

14          Q.       All right.

15          A.       Does he have pictures?

16          Q.       I am hoping to find out.

17          A.       So would we.

18          Q.       So and do you notice here on paragraph 33  
19 of Dr. Austin's declaration, he in fact says that  
20 the purpose of the investigation was to document  
21 the conditions of the facility? Right?

22                   MR. GASTEL: Objection to the form.

23          A.       Yes.

24                   BY MR. SCHRAMEK:

25          Q.       So if we knew what he saw in December of

1 2012 and we could compare it to what you saw in  
2 July of '14, we would be able to see what the  
3 differences were? Fair?

4 MR. GASTEL: Objection to the form.

5 A. That would be fair.

6 BY MR. SCHRAMEK:

7 Q. All right.

8 A. And again I allege what he saw or would  
9 have seen is what we saw a year and a half later.

10 Q. By the way, when you say it is your  
11 understanding that NECC immediately left the  
12 premises upon being shut down --

13 A. They were ordered by the government get  
14 out.

15 Q. What is the basis of that understanding?

16 A. I do not know specifically where I heard  
17 that.

18 Q. All right. So you don't know who you  
19 heard it from?

20 A. No.

21 Q. Someone said it? Right?

22 A. It was either in a news report. There was  
23 possibly on the 60 Minute expose. But the  
24 explanation was that the government came and  
25 basically closed the doors as is.

1 Q. I would like you to now turn to exhibit --  
2 strike that -- to page 16 of Dr. Austin's  
3 declaration.

4 (Witness complying.)

5 A. Okay.

6 Q. How long was your inspection in 2014?

7 A. Probably four to six hours.

8 Q. All right. Did you have a time frame in  
9 which you were supposed to be there to do the  
10 inspection?

11 A. We had I will use the word an appointment  
12 with Steve Higgins, the building manager, at I  
13 believe nine o'clock, and we were out by one-ish.

14 Q. So nine to one-ish is about four hours?  
15 Right?

16 A. Yes.

17 Q. And then someone else was going to be  
18 coming in that afternoon after you? Right?

19 A. If I am not mistaken, it was you.

20 Q. That's correct. It was me.

21 And in fact isn't it true that the  
22 trustee -- if you know -- isn't it true that the  
23 trustee initially fought Liberty's attempt to look  
24 at the premises?

25 A. I was aware of that, yes.

1 Q. And in fact, didn't the trustee purport  
2 and claim that going to the premises in 2014 would  
3 be irrelevant because it has -- it does not reflect  
4 the way it looked under operation?

5 MR. GASTEL: Objection to the form.

6 A. That is their position. Correct.

7 BY MR. GASTEL:

8 Q. And yet the Court allowed you in 2014 to  
9 go look at those premises over the trustee's  
10 objection? Right?

11 A. Yes.

12 Q. Did you get up on the walkable ceiling and  
13 look at the roof -- the ceiling of the cleanrooms  
14 from the top?

15 A. Personally, I did not.

16 Q. Did anyone else?

17 A. I'm not sure.

18 Q. But sitting here today, you are unaware of  
19 anyone who got up on the ceiling to look at the  
20 grid system?

21 A. Specifically I can't say anyone did. No.

22 Q. Okay. Did you see any access that was  
23 provided to the ceiling grid system when you were  
24 there?

25 A. Not that I am aware of.

1 Q. Did anyone show you how to get up on the  
2 ceiling grid system while you were there?

3 A. Not that I am aware of.

4 Q. And only having four hours instead of  
5 three days, that limited the extent of an  
6 inspection that you could do? Right?

7 A. Correct.

8 Q. And at the time -- could you turn to the  
9 page 23 of Dr. Austin's declaration?

10 (Witness complying.)

11 Q. What date did he file this declaration or  
12 sign this deck?

13 A. December 22, 2014.

14 Q. So when you went in July of '14 over the  
15 trustee's objection to do this inspection, you  
16 didn't have the benefit of Dr. Austin's allegations  
17 in this declaration, did you?

18 MR. HERMES: Objection.

19 A. I think we may have had parts of this at  
20 that time.

21 BY MR. SCHRAMEK:

22 Q. Liberty may have had parts of it?

23 A. Yes.

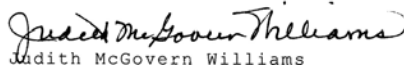
24 Q. All right. So if we -- you understand  
25 this was filed with the court after the inspection?

CERTIFICATE

I, Judith McGovern Williams, a Notary  
Public, do hereby certify:

That ROBERT C. KAISER, the witness whose  
deposition is hereinbefore set forth, was duly  
sworn by me and that such deposition is a true  
record of the testimony given by the said witness.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 13th day of July, 2015.

  
Judith McGovern Williams

Judith McGovern Williams

Registered Professional Reporter  
Certified Realtime Reporter  
Certified LiveNote Reporter  
Certified Shorthand Reporter No. 130993

My Commission expires:

May 5, 2017